

**LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY**

Item No. 1.E
Mtg. Date April 5, 2016
Dept. Development Services

Item Title: **Chollas Creek Diazinon, Metals, Bacteria TMDL Cost Share Agreement (FY 2015-16)**

Staff Contact: Malik Tamimi, Management Analyst

Recommendation:

Adopt a resolution (**Attachment B**) approving the City's participation in the Chollas Creek Diazinon, Metals and Bacteria Total Maximum Daily Load (TMDL) Cost Share Agreement.

Item Summary:

The Chollas Creek Watershed is the City's main receiving water body. The Clean Water Act requires states to develop a list of water bodies that do not or are not expected to meet water quality standards—this list is referred to as the 303(d) list. Chollas Creek is included on the 303(d) list for a series of impairments including Diazinon, heavy metals (lead, zinc, and copper) and bacteria. Under the direction of the EPA, the state water boards are required to issue Total Maximum Daily Load (TMDL) limits for certain water bodies on the 303(d) list. Chollas Creek is one such water body and a TMDL for Diazinon, Metals and Bacteria was passed by the San Diego Regional Water Quality Control Board (RWQCB) in 2002, 2007 and 2010, respectively.

As a named party in the Chollas Creek TMDLs, the City is required to show compliance with the TMDL requirements. In past years, the City has partnered with the other governmental agencies named in the Chollas Creek TMDLs. Staff proposes to continue to partner and cost share with the other named parties, the details of which can be found in the staff report (**Attachment A**).

Fiscal Impact:

The City's share of the agreement for FY 2015-16 is \$22,868.74, which is allocated in the Stormwater Fund 26.

Environmental Review:

- | | |
|---|---|
| <input checked="" type="checkbox"/> Not subject to review | <input type="checkbox"/> Negative Declaration |
| <input type="checkbox"/> Categorical Exemption, Section | <input type="checkbox"/> Mitigated Negative Declaration |

Public Information:

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> None | <input type="checkbox"/> Newsletter article | <input type="checkbox"/> Notice to property owners within 300 ft. |
| <input type="checkbox"/> Notice published in local newspaper | <input type="checkbox"/> Neighborhood meeting | |

Attachments:

- A. Staff Report
- B. Resolution/Exhibit 1 Cost Share Agreement

LEMON GROVE CITY COUNCIL STAFF REPORT

Item No. 1.E

Mtg. Date April 5, 2016

Item Title: **Chollas Creek Diazinon, Metals, and Bacteria TMDL Cost Share Agreement
FY 2015-16**

Staff Contact: Malik Tamimi, Management Analyst

Discussion:

The Chollas Creek Watershed is the City's main receiving water body and is on the State's 303 (d) list of water bodies with impairments that include but not limited to Diazinon, metals (lead, zinc, and copper), and bacteria. Under the direction of the EPA, the San Diego Regional Water Quality Control Board (RWQCB) issued Total Maximum Daily Load (TMDL) limits for the Chollas Creek Watershed based on type of pollutant, level of exceedance, and frequency of exceedance. The RWQCB adopted resolutions nos. R9-2002-0123, R9-2007-0043, and R9-2010-0001 for the Chollas Creek Watershed approving an amendment to the Water Quality Control Plan for the San Diego Basin (Basin Plan) to incorporate a TMDL for Diazinon, Metals, and Bacteria respectively. The RWQCB also adopted Investigation Order No. R9-2004-0277 and Addendum No. 1, requiring the named parties to conduct water quality monitoring and prepare annual monitoring reports to assess compliance with the TMDLs.

The Diazinon and Metals TMDL names Caltrans, the United States Navy, the Port District, the County of San Diego, and the cities of San Diego, La Mesa, and Lemon Grove as the responsible parties for compliance with the orders. The Bacteria TMDL names the above mentioned parties with the exception of the Navy, which is not a named party to the Bacteria TMDL. All the named parties determined that the most cost effective way to achieve compliance with the TMDLs was to cost share the required monitoring and reporting each year.

The total cost of this cooperative effort is \$251,135. The City's share of the monitoring and the annual compliance reports for FY 2015-16 is \$22,868.74 and is budgeted for in Fund 26 Stormwater Fund.

Conclusion:

Staff recommends that the City continue to collaborate with the other named parties. Staff considers that collaborating is the least expensive and most efficient means to maintain compliance with the Diazinon, Metals, and Bacteria TMDL requirements. The City could not fund the necessary monitoring on its own. Staff recommends that the City Council approve the resolution (**Attachment B**) and authorize the City of Lemon Grove to continue to participate in the Chollas Creek Diazinon, Metals, and Bacteria TMDL Cost Share Agreement (**Attachment B Exhibit 1**).

RESOLUTION NO. 2016_____

RESOLUTION OF THE LEMON GROVE CITY COUNCIL AUTHORIZING PARTICIPATION IN THE CHOLLAS CREEK HYDROLOGIC UNIT 908.22 IMPLEMENTATION MONITORING FOR CHOLLAS CREEK DIAZINON AND DISSOLVED METALS TOTAL MAXIMUM DAILY LOADS (INVESTIGATION ORDER NO. R9-2004-0277 AND ADDENDUM NO. 1) AND CHOLLAS CREEK MONITORING FOR TOTAL MAXIMUM DAILY LOADS FOR INDICATOR BACTERIA, PROJECT I - TWENTY BEACHES AND CREEKS IN THE SAN DIEGO REGION (INCLUDING TECOLOTE CREEK) (RESOLUTION NO. R9-2010-0001)

WHEREAS, the Clean Water Act section 303(d) requires states to develop a list of water bodies that do not or are not expected to meet water quality standards after implementing technology-based controls; and

WHEREAS, the State Water Resources Control Board, as a designee of the U.S. Environmental Protection Agency, has delegated authority to the San Diego Regional Water Quality Control Board (RWQCB) for administration of the Total Maximum Daily Load (TMDL) within the boundaries of its region; and

WHEREAS, Chollas Creek is a 303(d) listed water body requiring TMDL issuance; and

WHEREAS, the RWQCB adopted Resolution No. R9-2002-0123 approving an amendment to the Water Quality Control Plan for the San Diego Basin (Basin Plan) to incorporate a TMDL for Diazinon in the Chollas Creek Watershed; and

WHEREAS, the RWQCB adopted Resolution No. R9-2007-0043 approving an amendment to the Water Quality Control Plan for the San Diego Basin (Basin Plan) to incorporate TMDLs for dissolved copper, lead, and zinc in the Chollas Creek Watershed; and

WHEREAS, the RWQCB adopted Resolution No. R9-2010-0001 approving an amendment to the Water Quality Control Plan for the San Diego Basin (Basin Plan) to incorporate the Beaches and Creeks Bacteria TMDL on February 10, 2010; and

WHEREAS, the RWQCB adopted Investigation Order No. R9-2004-0277 and Addendum No. 1, and subsequent addenda, which directs responsible parties to conduct monitoring and to furnish monitoring reports to assess compliance with the TMDLs for Diazinon and dissolved copper, zinc, lead, and bacteria; and

WHEREAS, the RWQCB has determined that the responsible parties under Resolution No. R9-2002-0123, Resolution No. R9-2007-0043, and Investigation Order No. R9-2004-0277 are the County, Caltrans, U.S. Navy, Port of San Diego, and the incorporated cities of Lemon Grove, La Mesa, and San Diego; and

WHEREAS, the RWQCB has determined that the responsible parties under Resolution No. R9-2010-0001, are the County, Caltrans, Port of San Diego, and the incorporated cities of Lemon Grove, La Mesa, and San Diego; and

WHEREAS, the City of Lemon Grove is a named party in the Chollas Creek Diazinon, Metals, Bacteria TMDLs; and

Attachment B

WHEREAS, the Chollas Creek TMDLs requires water quality monitoring and reporting;
and

WHEREAS, the City worked in collaboration with the other named parties to implement the requirements of the TMDL and wishes to continue that collaboration as well as mitigate compliance monitoring and implementation costs; and

WHEREAS, the parties have developed a cost share agreement using a formula to share monitoring and activity costs; and

WHEREAS, it is cost prohibitive and inefficient for the City of Lemon Grove to perform these compliance tasks independently; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California hereby:

1. Approves the attached Chollas Creek Diazinon, metals, bacteria TMDL Cost Share Agreement Attachment B Exhibit 1; and
2. Authorizes the City Manager to execute said agreement.

/////

/////

Exhibit 1

COST-SHARE AGREEMENT

**Chollas Creek Hydrologic Unit No. 908.22
Implementation Monitoring for Chollas Creek Diazinon and Dissolved
Metals Total Maximum Daily Loads (Investigation Order No. R9-2004-
0277 and Addendum No. 1) and Chollas Creek Monitoring for Total
Maximum Daily Loads for Indicator Bacteria, Project I - Twenty
Beaches and Creeks in the San Diego Region (Including Tecolote
Creek) (Resolution No. R9-2010-0001)**

Fiscal Year 2016

This Cost Share Agreement (AGREEMENT) entered into by the County of San Diego (hereinafter called County), California Department of Transportation (hereinafter called Caltrans), United States Navy Commander, Navy Region Southwest (hereinafter called U.S. Navy), San Diego Unified Port District (hereinafter called Port of San Diego), and the incorporated cities of Lemon Grove, La Mesa, and San Diego, (hereinafter collectively called PARTIES and individually called PARTY), establishes the responsibilities of each PARTY with respect to conducting water quality monitoring and reporting in accordance with the Chollas Creek Dissolved Metals Total Maximum Daily Load (TMDL) Implementation Plan developed by the PARTIES to comply with Resolution No. R9-2007-0043, and in conformance with the requirements under Investigation Order No. R9-2004-0277 and Addendum No. 1, issued by the California Regional Water Quality Control Board, San Diego Region (hereinafter called SDRWQCB) and monitoring within the Chollas Creek Hydrologic Unit (HU) No. 908.22 in accordance with Resolution No. R9-2010-0001.

RECITALS

WHEREAS, the Clean Water Act (CWA) section 303(d) requires states to develop a list of waterbodies that do not or are not expected to meet water quality standards after implementing technology-based controls; and,

WHEREAS, the Chollas Creek has been listed by the State Water Resources Control Board (SWRCB) as a water quality limited segment for which TMDLs must be developed pursuant to section 303(d) in order to attain water quality objectives and restore the waterbody's beneficial uses; and,

WHEREAS, the SWRCB as a designee of the United States Environmental Protection Agency (USEPA) has delegated authority to the SDRWQCB for administration of the TMDLs within the boundaries of its region; and,

WHEREAS, the SDRWQCB adopted Resolution No. R9-2002-0123 approving an amendment to the Water Quality Control Plan for the San Diego Basin (Basin Plan) to incorporate a TMDL for Diazinon in the Chollas Creek Watershed; and,

WHEREAS, the SDRWQCB adopted Resolution No. R9-2007-0043 approving an amendment to the Water Quality Control Plan for the San Diego Basin (Basin Plan) to incorporate TMDLs for dissolved copper, lead, and zinc in the Chollas Creek Watershed; and,

Attachment B

WHEREAS, the SDRWQCB adopted Resolution No. R9-2010-0001 approving an amendment to the Water Quality Control Plan for the San Diego Basin (Basin Plan) to incorporate the Beaches and Creeks Bacteria TMDL on February 10, 2010; and,

WHEREAS, the SDRWQCB adopted Investigation Order No. R9-2004-0277 and Addendum No. 1, attached as Exhibit 1 to this Agreement and incorporated herein by reference, and subsequent addenda, which directs the PARTIES to conduct monitoring and to furnish monitoring reports to assess compliance with the TMDLs for Diazinon and dissolved copper, zinc, and lead; and,

WHEREAS, the SDRWQCB has determined that the responsible parties under Resolution No. R9-2002-0123, Resolution No. R9-2007-0043, and Investigation Order No. R9-2004-0277 are the County, Caltrans, U.S. Navy, Port of San Diego, and the incorporated cities of Lemon Grove, La Mesa, and San Diego, as outlined in Exhibit 1; and,

WHEREAS, the SDRWQCB has determined that the County, Port of San Diego, Caltrans, and the incorporated cities of Lemon Grove, La Mesa, and San Diego are responsible parties under Resolution No. R9-2010-0001 (Exhibit 2); and,

WHEREAS, the PARTIES have agreed to work together to conduct the monitoring described in the Chollas Creek Diazinon TMDL, Dissolved Metals TMDL and Bacteria TMDL Sampling and Analysis Plan 2015-2016 (Exhibit 4); and,

WHEREAS, the PARTIES recognize that expenditures will be needed to complete the Chollas Creek Diazinon TMDL and Dissolved Metals TMDL Compliance Monitoring (Exhibit 4 Section 2.0) at a cost not to exceed \$213,932 for Fiscal Year 2016. The cost will be shared among the PARTIES as indicated in Section IV.A.; and,

WHEREAS, the PARTIES, with the exception of the U.S. Navy, recognize that expenditures will be needed to complete the Beaches and Creeks Bacteria TMDL monitoring and reporting required by Resolution No. R9-2010-0001 (Exhibit 2) at a cost not to exceed \$37,203 for Fiscal Year 2016. The cost will be shared among the PARTIES, with the exception of the U.S. Navy, as indicated in Section IV.B.; and,

WHEREAS, the monitoring described in Exhibit 4 (Section 2.0) is mandatory to support compliance with the requirements of Investigation Order No. R9-2004-0277 and Addendum No. 1, and requires the participation of all PARTIES; and,

WHEREAS, the monitoring and reporting described in Exhibit 4 (Section 3.0) is mandatory to support compliance with the requirements of Resolution No. R9-2010-0001, and requires the participation of the PARTIES with the exception of the U.S. Navy; and,

WHEREAS, the PARTIES have agreed upon the scope(s) of work and cost estimates for monitoring and reporting described in Exhibit 3; and,

WHEREAS, the City of San Diego has agreed to lead the technical effort by providing project management and contract administration services for the PARTIES and has hired a mutually agreed upon consultant to perform the identified scope of work per the cost estimate described in Exhibit 3; and,

WHEREAS, the required compliance monitoring reports will be submitted to the SDRWQCB by the City of San Diego on behalf of the Responsible Agencies as outlined in Investigation Order No. R9-2004-0277 and Resolution No. R9-2010-0001.

NOW, THEREFORE, the PARTIES incorporate the Recitals set forth above and mutually agree as follows:

Attachment B

- I. **PURPOSE:** This AGREEMENT is entered into for the purpose of outlining the responsibilities of the PARTIES and funding the implementation of monitoring and reporting described in Exhibits 3 and 4.
- II. **TERM:** The term of this AGREEMENT commences on the date of the last signature of the majority of the duly authorized representatives of the PARTIES and shall run until June 30, 2016 as described in Exhibit 6, or until all of the tasks described in Exhibits 3 and 4 are completed to the satisfaction of the PARTIES, whichever is earlier.
- III. **PARTY RESPONSIBILITIES AND PARTICIPATION:**
 - A. **RESPONSIBILITIES OF CONTRACT MONITORING AND TECHNICAL LEAD:** The City of San Diego is hereby designated the Contract Monitoring and Technical Lead. As such, the City of San Diego incurs the responsibility of overall project management, administration of consultant contracts, responsibility of coordinating overall monitoring work products such as the cost share agreement, and submittal of monitoring work products on behalf of the PARTIES as required in Investigation Order No. R9-2004-0277, Resolution No. R9-2010-0001, and other administrative duties as agreed upon by the PARTIES.
 - B. **RESPONSIBILITIES OF ALL PARTIES:** Each PARTY agrees to be participatory in the monitoring and reporting required by Investigative Order No. R9-2004-0277 and Resolution No. R9-2010-0001 and will assign one (1) person to serve as the PARTY representative to participate in meetings, collaborate on developing strategies, making decisions, and reviewing work products and submittals.
- IV. **FUNDING:**
 - A. The cost of implementing the Chollas Creek Dissolved Metals TMDL monitoring and reporting described in Exhibit 3 (Task 1, 3, 5, 6 & 7) for Fiscal Year 2016 will not exceed \$213,932. The costs are shared as shown in Table 1 below and are based on a formula of 45% land area, 45% population (2010 Census data), and 10% equal division fee (Exhibit 5a) for each PARTY contributing to the Chollas Creek, as named in the Chollas Creek Dissolved Metals TMDL (Investigative Order R9-2004-0277).
 - B. The cost of implementing the Beaches and Creeks Bacteria TMDL monitoring described in Exhibit 3 (Task 2 and 4) for Fiscal Year 2016 will not exceed \$37,203. The costs are shared as shown in Table 1 below and are based on a formula of 45% land area, 45% population (2010 Census data), and 10% equal division fee (Exhibit 5b) for each PARTY contributing to the Chollas Creek, as named in the Beaches and Creeks Bacteria TMDL (Resolution No. R9-2010-0001) for the Chollas Creek Hydrologic Unit.

Attachment B

Table 1 - Chollas Creek Diazinon and Dissolved Metals TMDL Monitoring and Reporting Costs

PARTY	Task 1 and 3 – Metals/ Diazinon Monitoring and Reporting	Task 2 and 4 – Bacteria Monitoring and Reporting	TOTAL COST-SHARE
City of San Diego	\$157,381.35	\$27,594.04	\$184,975.39
City of Lemon Grove	\$19,386.78	\$3,481.95	\$22,868.74
City of La Mesa	\$17,698.71	\$3,184.42	\$20,883.13
County of San Diego	\$4,019.82	\$788.90	\$4,808.72
Port of San Diego	\$3,666.34	\$727.37	\$4,393.71
Caltrans	\$7,640.43	\$1,426.32	\$9,066.75
U.S. Navy	\$4,138.57	\$0.00	\$4,138.57

- C. Each PARTY shall pay its share of expenses within 60 days of receipt of an invoice from the Contract Monitoring and Technical Lead. An invoice for the above TOTAL cost-share amount shall be sent to each PARTY no later than May 31, 2016. Funds collected and not expended at the end of the project shall be refunded to each PARTY.
- V. **NON-COMPLIANCE WITH AGREEMENT REQUIREMENTS:** Any participant to this AGREEMENT found to be in non-compliance with the conditions of this AGREEMENT shall be solely liable for any lawfully assessed penalties resulting from such non-compliance. Failure to comply with AGREEMENT conditions within specified or agreed upon timelines shall constitute non-compliance with the AGREEMENT.
- VI. **AMENDMENTS TO THE AGREEMENT:** This AGREEMENT may be amended only by consent of all the PARTIES. No amendment shall be effective unless it is in writing and signed by the duly authorized representatives of the PARTIES.
- VII. **GOVERNING LAW:** This AGREEMENT shall be governed and construed in accordance with the laws of the State of California. If any provision or provisions shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. In addition, each PARTY agrees to comply with all federal, state and local laws and ordinances applicable to the work to be performed under the terms of this AGREEMENT.
- VIII. **CONSENT AND BREACH NOT WAIVER:** No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the PARTIES to have waived or consented. Any consent by any PARTY to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

Attachment B

- IX. **DISPUTES:** The PARTIES agree to mediate any dispute prior to filing suit or prosecuting suit against the other parties. In the event suit is brought upon this AGREEMENT to enforce its terms, each PARTY shall be responsible for their own attorneys' fees and costs.
- X. **LEGAL RESPONSIBILITY:** Each PARTY to this AGREEMENT (1) shall retain its legal responsibility to comply with Investigation Order No. R9-2004-0277 and Resolution No. R9-2010-0001, and (2) shall pay all fines, penalties, and costs which may arise out of such PARTY's non-compliance with Investigation Order No. R9-2004-0277 or Resolution No. R9-2010-0001.
- XI. **APPLICATION OF PRIOR AGREEMENTS:** This AGREEMENT constitutes the entire Agreement between the parties with respect to the subject matter; all prior agreements, representations, statements, negotiations, and undertakings are superseded hereby.
- XII. **TERMINATION:** Termination of participation from this AGREEMENT by any PARTY shall require thirty (30) days written notice to all PARTIES prior to the effective date of termination. Termination of this agreement does not release any PARTY for obligations of Investigation Order No. R9-2004-0277 or Resolution No. R9-2010-0001, nor does it release the PARTY from their financial responsibilities as outlined in Section IV of this AGREEMENT. Upon termination, the terminating PARTY shall pay their cost share in full.
- XIII. **ENCUMBRANCE:** By reason of constraints in California law (Streets and Highways Code Sections 114 & 130) and the California Constitution (Article XVI, section 7), Caltrans encumbers an amount not to exceed \$9,066.75 as its portion of the shared cost and no further funding will be available to address the Caltrans obligations assumed under this AGREEMENT unless this Section XIII is amended by Caltrans to reflect a new enhanced funding limit. Caltrans funds are subject to legislative appropriation and availability of funds.
- XIV. **FEDERAL LAW:** This agreement is void to the extent that it is inconsistent with applicable law. Portions that are void are severable. In particular this agreement is void to the extent that it commits funds in violation of the federal anti-deficiency act or its state law equivalent. Every effort will be made to avoid construing the terms of this agreement as violations of those laws, including adjustment of payment terms and schedules by mutual agreement of the parties.

Attachment B

- EXHIBIT 1: SDRWQCB, Investigation Order No. R9-2004-0277 and Addendum No. 1
- EXHIBIT 2: SDRWQCB, Resolution No. R9-2010-0001
- EXHIBIT 3: Scope of Work: Chollas Creek Diazinon TMDL, Dissolved Metals TMDL, and Bacteria TMDL Compliance Water Quality Monitoring, Analyses, and Reporting
- EXHIBIT 4: Chollas Creek Diazinon TMDL, Dissolved Metals TMDL and Bacteria TMDL Sampling and Analysis Plan 2015-2016
- EXHIBIT 5: FY16 Discharger Shared Budget Metals Diazinon Bacteria TMDL
- EXHIBIT 6: FY16 Schedule

Attachment B

IN WITNESS WHEREOF, the PARTIES have caused this AGREEMENT to be signed and executed the day and year first above written. This AGREEMENT may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This AGREEMENT shall become effective on the date of the last signature of the duly authorized representatives of the PARTIES.

IN WITNESS THEREOF, this AGREEMENT is executed as follows:

For the City of Lemon Grove

Date: _____

Signature

Printed Name

Title

Approved to as Form

City of Lemon Grove Attorney

Date: _____

Signature

Printed Name

Title

Attachment B

(Signature pages for the other named parties are not included here)